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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/805,941

03/22/2004

Valentin Hierzer

CCK-0138

1020

7590

06/26/2006

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EXAMINER

BUI, LUAN KIM

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 06/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/805,941

Applicant(s)

HIERZER ET AL.

Examiner

Luan K. Bui

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3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-17 and 19-30 is/are rejected.
- 7) ☒ Claim(s) 3 and 18 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/26/04</u> . | 6) <input type="checkbox"/> Other: ____. |

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4-7 and 19-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 4 and 19, the phrase “an engineered point of weakness” is vague and indefinite because it has no clear meaning.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4-8, 10-17, 19-23 and 25-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Wood (5,927,549). To the extent that the Examiner can determine the scope of the claims, Wood discloses a portion dispensing container assembly comprising a container (12) having an externally threaded finish portion (32), a closure main body (10, 28, 36) mounted to finish portion and having a storage space for holding additive material (100), a plunger member (90) mounted for linear movement with respect to the closure main body between a first, upper position and a second, lower portion wherein said storage space is caused to open into communication with the container (Figures 6 and 7) and tamper evident interlock means (26, 50)

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for preventing movement of the plunger member to the second, lower position until the tamper evident interlock means is defeated by a consumer (Figures 1-7).

As to claim 4, Wood discloses the closure main body comprises a point of weakness (42) in the structure defining the storage space. As to claim 5, the structure comprises a flexible sealing member (40). As to claim 8, the plunger member comprises a blunt upper surface (84, column 6, lines 48-50) adapted to be depressed by a consumer. As to claim 10, Wood discloses the plunger member comprises a lower body portion (94, 96) and an upper head portion (62) that is wider in longitudinal cross section than the lower body portion. As to claims 11-15, the tamper evident interlock means comprises a circumferentially extending tamper evident strip (26, Figure 5) positioned between the upper head portion of the plunger member and the closure main body.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 9 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wood (5,927,549) in view of Elliott (6,003,728). Wood discloses the portion dispensing container assembly as above having all the limitations of the claims except for the blunt upper surface being convex. Elliott teaches a blunt upper surface is convex (96, 98, 102). It would have been obvious to one having ordinary skill in the art at the time the invention was made in view of

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Elliott to modify the blunt upper surface of Wood so it comprises a convex to facilitate depressing the plunger member.

Allowable Subject Matter

7. Claims 3 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

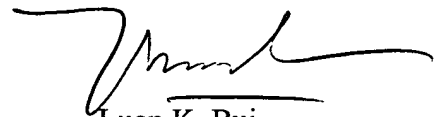
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. **The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for Formal papers and After Final communications.**

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lkb
June 22, 2006


Luan K. Bui
Primary Examiner
Art Unit 3728